

REMARKS

Reconsideration and allowance are respectfully requested in view of the following remarks.

Claims 1-27 are pending in the application. Claim 26 has been withdrawn. However, rejoinder of claim 26 is respectfully requested upon allowance of claim 17.

The replacement drawing filed April 14 is indicated as being unacceptable for unclearly showing the “anti-asphyxia valve”. Applicants respectfully submit that an anti-asphyxia valve 80 was schematically shown in replacement Figure 11, and paragraph 39 of the specification clearly indicates that anti-asphyxia valves are known in the art and could be provided to the filter cap and/or vent. Accordingly, Applicants respectfully submit that the replacement Figure should be accepted as it schematically shows such feature without adding any new matter.

The drawings are also objected to under 37 CFR 1.83(a) for not showing the “anti-asphyxia valve” or “gas washout vent”. Applicants respectfully disagree with this objection as the “valve” is shown in the previously discussed replacement Figure 11 and the “vent” is shown as vent port 62 or vent 64 in Figures 5 to 7 for example.

Withdrawal of the drawing objections is respectfully requested.

The specification was objected to for allegedly adding “gas washout valve”. Applicants find this objection to be unclear as it does not appear that any “gas washout valve” has been added. Clarification of such objection is respectfully requested.

Claims 1, 7, and 8 are rejected under 35 U.S.C. §112, first paragraph. With respect to the gas washout vent of claim 1, such vent is shown as vent port 62 or vent 64 in Figures 5 to 7 for example. With respect to the calibration cap of claims 7 and 8, such cap is described in paragraphs 25 and 26 and shown in Figure 2 for example. Withdrawal of the §112, first paragraph, rejection is respectfully requested.

Claims 1-6, 9-11, and 13 are rejected under 35 U.S.C. §103(a) over Choksi (US 4,360,018), Barnett (US 5,647,357), and Serowski (US 5,937,851). This rejection is respectfully traversed.

The Office Action relies on Choksi to teach a patient interface in communication with a source of pressurized gas (43) and having a filter assembly (40) configured to receive exhaled gas by the patient in use and to vent exhaust to the atmosphere in proximity to the patient interface (Fig. 5). The Office Action acknowledges that Choksi fails to disclose a full-face mask with a pressure chamber, shell and cushion that is adjacent to a gas washout vent that will vent gas supplied to the mask in the administration of CPAP therapy, and relies on Barnett and Serowski to teach these features.

Applicants respectfully disagree with the Office Action's assertion that Choksi teaches exhausting exhaled gas in proximity to the patient interface. In the embodiment of Figure 5 of Choksi, the exhaled gas of the anesthesia system is discarded through a conduit 45. As described in col. 1, lines 42-44 and col. 3, lines 20-22, the proposed outlet of conduit 45 is located "remote" from the patient, not "adjacent" the patient such as the filter (e.g., see col. 2, lines 27-28 which describes the filter 4 as being adjacent the patient).

Also, Applicants respectfully disagree with the Office Action's assertion that Choksi teaches exhausting exhaled gas to atmosphere. Choksi merely notes that excess anesthesia gas is vented and discarded though conduit 45. There is no teach or suggestion that the gas is exhausted to atmosphere. In fact, it would be undesirable to exhaust anesthesia gases to atmosphere in the vicinity of the patient or medical personnel.

With respect to Barnett, Applicants respectfully note that there is no teaching or suggestion of any type of vent, so there is no teaching, suggestion, or motivation to combine such mask with those of Choksi and Serowski, for example.

With respect to Serowski, there is no reason or motivation to combine Choksi and Serowski as they relate to mutually exclusive structures, i.e., Choksi relates to an anesthesia system with a filter to protect against cross-contamination and Serowski relates to a CO₂ exhaust device for a mask used in PAP treatment.

Moreover, there is no teaching, suggestion, or motivation in Serowski to include Choksi's filter "to provide the advantages of a better mask seal that will not leak due to being over pressurized" as asserted by the Office Action. Serowski's exhaust device 100 is not provided with any filter and there is no indication in Serowski that a filter would be desired.

In addition, a filter according to an embodiment of the present invention may be provided to reduce the risk of cross-infection during positive airway pressure therapy, e.g., see paragraphs 5 and 7 of Applicant's specification. Applicants are unclear as to Office Action's assertion that it would be obvious to include a filter in a patient interface to enhance mask seal.

Withdrawal of the rejection of claim 1 is respectfully requested.

Claims 2-6, 9-11, and 13 are allowable by virtue of their dependence on claim 1 and additionally allowable for their recitation of additional patentable subject matter.

Claims 7 and 8 are rejected under 35 U.S.C. §103(a) over Choksi, Barnett, and Serowski, and further in view of Wallace (US 6,209,541). The Office Action relies on Wallace to teach a calibration cap. This does not make up for the deficiencies noted above with respect to Choksi, Barnett, and Serowski. Accordingly, claims 7 and 8 are allowable by virtue of their dependence on claim 1 and additionally allowable for their recitation of additional patentable subject matter.

Claim 12 is rejected under 35 U.S.C. §103(a) over Choksi, Barnett, and Serowski, and further in view of Roberts (US 6,123,076). The Office Action relies on Roberts to teach impedance of a filter. This does not make up for the deficiencies noted above with respect to Choksi, Barnett, and Serowski. Accordingly, claim 12 is allowable by virtue of its dependence on claim 1 and additionally allowable for its recitation of additional patentable subject matter.

Claims 14-16 are rejected under 35 U.S.C. §103(a) over Choksi, Barnett, and Serowski, and further in view of Hely (US 5,896,857). The Office Action relies on Hely to teach an anti-asphyxia valve. This does not make up for the deficiencies noted above with respect to Choksi, Barnett, and Serowski. Accordingly, claims 14-16 are allowable by virtue of their dependence on claim 1 and additionally allowable for their recitation of additional patentable subject matter.

Claims 17, 19-24, and 27 rejected under 35 U.S.C. §103(a) over Choksi and Serowski. This rejection is respectfully traversed.

Choksi and Serowski do not teach or suggest a mask assembly including, *inter alia*, an anti-viral filter assembly configured to receive gas exhaled by the patient in use and a vent port positioned on or immediately adjacent the filter assembly, whereby exhaled gas is vented to atmosphere through the vent port just after passing through the filter assembly as recited in claim 17. As noted above, Choksi fails to teach or suggest exhausting exhaled gas to atmosphere in proximity to the patient interface. In addition, there is no reason or motivation to combine

Choksi and Serowski as they relate to mutually exclusive structures, and there is no teaching, suggestion, or motivation in Serowski to include Choksi's filter.

Withdrawal of the rejection of claim 17 is respectfully requested.

Claims 19-24 and 27 are allowable by virtue of their dependence on claim 17 and additionally allowable for their recitation of additional patentable subject matter.

Claim 18 is rejected under 35 U.S.C. §103(a) over Choksi and Serowski, and further in view of Roberts. The Office Action relies on Roberts to teach impedance of a filter. This does not make up for the deficiencies noted above with respect to Choksi and Serowski. Accordingly, claim 18 is allowable by virtue of its dependence on claim 17 and additionally allowable for its recitation of additional patentable subject matter.

Claim 25 is rejected under 35 U.S.C. §103(a) over Choksi and Serowski, and further in view of Barnett. The Office Action relies on Barnett to teach a mask having a shell and a cushion. This does not make up for the deficiencies noted above with respect to Choksi and Serowski. Accordingly, claim 25 is allowable by virtue of its dependence on claim 17 and additionally allowable for its recitation of additional patentable subject matter.

In view of the above amendments and remarks, Applicants respectfully submit that all claims are patentable and that the entire application is in condition for allowance.

Should the Examiner believe that anything further is desirable to place the application in better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____

Paul T. Bowen
Reg. No. 38,009

PTB:IGS/lmr

901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100